

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC.,	No. C-08-4571 MMC
Plaintiff,	
v.	<b>ORDER GRANTING KFD</b>
	<b>ENTERPRISES, INC. AND KENNETH</b>
CITY OF EUREKA,	<b>DAER’S MOTION TO STRIKE</b>
Defendant.	

\_\_\_\_\_/

And related counter and cross claims.

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Before the Court is plaintiff and cross-defendant KFD Enterprises, Inc. and third-party defendant Kenneth Daer’s (collectively, “the moving parties”) “Motion to Strike Portions of the First Amended Counterclaim and Third-Party Complaint of City of Eureka,” filed August 10, 2009. Counter-claimant and third-party plaintiff City of Eureka (“the City”) has filed a “Conditional Non-Opposition,” to which the moving parties have replied.<sup>1</sup> Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.


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<sup>1</sup> By order dated September 30, 2009, the previously scheduled hearing on the motion was vacated.

1 Paragraph 92 of the complaint at issue, by which the City alleges the moving parties  
2 acted with "oppression, fraud or malice, and in wanton disregard of the health and safety"  
3 of others, is, for the reason stated by the moving parties, subject to being stricken. See  
4 Fed. R. Civ. P. 12(f) ("The court may strike from a pleading an insufficient defense or any  
5 redundant, immaterial, impertinent, or scandalous matter.")

6 Accordingly, the Motion is hereby GRANTED, and Paragraph 92 is stricken from the  
7 City's First-Amended Complaint.<sup>2</sup>

8 **IT IS SO ORDERED.**

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10 Dated: October 19, 2009

  
MAXINE M. CHESNEY  
United States District Judge

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27 <sup>2</sup> The City states subsequent discovery may uncover facts to support a claim for  
28 "exemplary damages" and that it may seek to "state a claim" therefor. (See Cond. Opp'n  
Br. 2:6-10.) The instant order does not foreclose the City from making any appropriate  
motion at a later date.